

Quid Novi

VOL. IX NO.8

McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT DE L'UNIVERSITE MCGILL

November 8th, 1988
le 8 novembre, 1988

The Final Arbiter Part IV

This week we present the fourth in a series of five excerpts from *Judges* by Jack Batten (Toronto: MacMillan of Canada, 1986).

As such justices as Cartwright and Fauteux were running out their string on the court, another man was moving to recast the Supreme Court from behind the scenes. He was Pierre Trudeau, himself a lawyer and a teacher much learned in the law. Trudeau was probably the first prime minister to understand precisely the sort of judges he wanted on the court in Ottawa. He went on the hunt for scholars and for men - and, as it evolved, for a woman - who understood a thing or two about constitutional law. Trudeau was smoothing the way toward a Supreme Court that would think through the changes in the country's constitution that he saw as a necessity. He made a mistake or two in his appointments. Two justices from Quebec, both Trudeau choices, had short and mostly unhappy tenures on the court in the 1970s. Louis-Phillippe de Grandpré found himself lonely in Ottawa, and his successor, Yves Pratte, gathered more satisfaction from the corporate world, sitting on the boards of Domtar and Power Corporation, to which he returned after less than two years on the court. But de Grandpré and Pratt were exceptions among Trudeau appointees. The others fitted the mould he had in mind, most especially Bora Laskin.

Laskin was many things that made him unique to the Supreme Court: a Jew, an academic, a

lawyer with virtually no courtroom experience. There had been a few of the latter who reached the court but no men who were either Jewish or worker in legal academe, much less one who was both. Laskin grew up in Thunder Bay, Ontario, the son of an immigrant from Russia who ran a furniture store. He studied law at Osgoode Hall and Harvard, and he taught for twenty-eight years. Laskin's range of subjects was breathtaking, from property law in first year to constitutional law in second year to labour law in third year. That tour de force of versatility meant that on any given couple of days in the classroom, Laskin would shift from the law's dry techniques to an exploration of the political science behind judicial opinions to a searching inspection of due process and the rights of individual Canadian workers. Laskin was bound to be an odd duck when he took his appointment to the Supreme Court in March 1970 and when he moved up to chief justice in December 1973.

Two labels stuck to Laskin during his years on the court. One was "the great dissenter" and the other, taking in him and the other eight justices, was "the Laskin court". Laskin didn't care for either label. The first had at least some merit on the record. Especially in civil-rights cases, Laskin often dissented from the majority judgments of his brethren. The Murdoch case in 1975 was famous as an example of that propensity. Irene Murdoch was the wife of an Alberta

rancher who, when she became the rancher's ex-wife after twenty-five years of marriage, claimed half the ranch as her fair share. Nothing doing, the majority of the Supreme Court held in a four-to-one decision. The four justices treated marriage as a straightforward legal contract, and since Mrs. Murdoch couldn't prove in legal terms that her work over a quarter-century of tending to her husband's needs around the ranch had increased his assets, she was out of court and out of luck.

Laskin dissented.

"No doubt," he wrote in a preamble to the judgment in which he suggested a route to recompense Irene Murdoch, "legislative action may be a better way to lay down policies and prescribe conditions under which and the extent to which spouses should share the property acquired by either or both during marriage. But the better way is not the only way; and if the exercise

cont'd on p. 5

Quote of the Week

Colin Chang speaking to Henry Mizrahi:

"No, not a law girl, a *real* girl!"



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ANNOUNCEMENTS

Term I Examination Schedules

Fall Term Examination Schedules are now available at the Student Affairs Office.

Examination Numbers

All Law Faculty examinations are written by an Examination Number: these numbers are now available at the Student Affairs Office.

Classes on November 21

Please note that on Monday, November 21 - Election Day - classes are not cancelled.

It's a Boy!

Born to Theresa Gibbons-Zatorre (LL. B. III) and her husband Robert on October 30, 1988 at St. Mary's Hospital. Evan Patrick weighed in at 6 lbs, 6 ounces (2.8 kg.'s before free trade).

Yearbook Cover Design

The yearbook committee is now accepting cover design art. Vous pouvez soumettre vos créations jusqu'au vendredi, 18 novembre 1988 dans la boîte du comité de l'album-souvenir au bureau de l'AED.

Delta Theta Phi Movie Night

Thursday, November 10, 1988

Starting at 7:30 p.m., in the lounge.

Please vote for two films which you want to see. Ballots must be returned to S.A.O. by 12:00 noon Wednesday, the 9th of November.

- | | |
|-----------------------------------|---|
| 1) Being There | — |
| 2) The Graduate | — |
| 3) The Life of Brian | — |
| 4) Children of a Lesser God | — |
| 5) Clockwork Orange | — |
| 6) Open City (Roma, città aperta) | — |
| 7) Diva | — |
| 8) Mon Oncle Antoine | — |
| 9) Platoon | — |
| 10) Other_____ | — |

McGill Legal Aid Referendum

VOTE YES

November 9, 10 and 11

Yes for McGill Legal Aid means yes to continued and improved legal information services at McGill

Don't let apathy destroy such a vital service!

N.B. The Faculty of Law will only have one polling station November 9th. If you miss this opportunity you can still vote at the Union Building. Remember to bring your I.D.!

THE YEARBOOK IS COMING! THE YEARBOOK IS COMING!

by Karen Amaron

The yearbook committee has got their preparations for the 1988-89 yearbook well under way. We are having the book published by Josten's, the same publisher as "Old McGill". The book this year will be at least sixty pages in length, and will have a hardcover. The cost to the students will be \$10.00 per book. For this price you can have all of your memories - your trials and your triumphs - recorded forever!

Sales of the book will be for a two week period starting on November 7, 1988 and ending November 18, 1988. If you want a yearbook this year you **MUST** buy it during this sale period. This allows the yearbook committee to make a firm commitment to the publishers as to numbers, and keeps the cost of producing the yearbook down.

Two options are available to students this year. The first is that the yearbook will be available by the beginning of April to be distributed to students during exams. With this option there will be no Skit Nite pictures and no Grad Ball pictures. The second option is to have the book published in Mid-July. At that time, pictures for all events may be included. If students wished to have the book shipped to their summer residence at that time then they must pay an extra \$3.00 shipping and handling cost when they buy the book. Otherwise, the books will be available for pick up at the faculty any time after July 15, 1988. The yearbook committee prefers the second option, but this is YOUR yearbook! You decide and make your wishes known to either Karen Amaron or Ali Argun, or leave us a message in the Yearbook box in the L.S.A. office.

As a final note, we are asking for submissions

for the cover design for the yearbook. The design should be submitted on standard size paper, in black and white. It must be in the yearbook box at the L.S.A. office by November 18, 1988 at 5.00 pm.

This book will only be as good as the students of this faculty make it. Your interest and participation is essential. Ali and I want to hear from you.

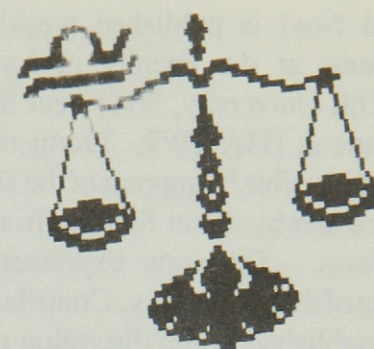
Bull-etin

McGill's "Empower Yourself" Series: Initial and Introductory Lecture proudly presents Mr. P. Oliver speaking on, "Eliminating, Reducing, or at least Tempering the Verbiage: Some Pointers and Directive on Clarity, Precision and Concision in the Interrelation Between Language and the Law".

This dynamic seminar will be held in the least sizable room immediately adjacent to the second door on the left when approaching from the west or alternatively the second room on the right when approaching from the east. It is located immediately above the ground floor, between the first (or first and second to be more precise) and second (or third and fourth) doors encountered upon entering that particular room.

Please bring some comestibles and potables as the seminar may extend beyond the scheduled two hours.

NOTE: "Of particular interest to Competitive Mooters!"



THE LSA GENERAL FORUM

We wish to thank all people who took the time to attend the LSA General Forum concerning the Cyclical Review. Your comments concerning various aspects of the Faculty were greatly appreciated. The LSA has prepared a document that hopefully has managed to suggest some of the concerns raised by you. That document is available for your perusal (being pinned up on the LSA Notices board just outside the LSA office).

To quickly summarize, the principal areas of concern alluded to in the document are the library, the National Program, and the physical facilities. The primary concerns about the library include the following: library centralization, collection size, environment/facilities (including computers and Muse), and staffing. As far as the National Program goes, we all recognize its benefit to us, but concerns were expressed concerning the bijuridical and bilingual aspects of the program. Finally, the physical facilities were discussed. While students have benefited enormously from the games room, the smokers' lounge and reading room and the LSA offices, the class sizes and limited availability of rooms for other activities is problematic.

To conclude, the general consensus was that the Forum was a constructive exercise and the Council is of the opinion that at least one more Forum will be held next term. We hope you will attend at that time as well.

Thank you.
Norbert Haensel

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Calendar of Events

NOVEMBER 1988

Nov. 9 12h00 "The Refugee Question: Immigration Policy and Laws in Canada" (Slideshow and discussion)
Peter Golden and Elizabeth Eid
Room 202, Chancellor Day Hall
Sponsored by Lawyers for Social Responsibility

Nov. 9 13h00 Forum National: "Canada's Bilingual Future"
Cynthia Dow of the Official Languages Commission
Room 203, Chancellor Day Hall
Refreshments provided. All are welcome.

Nov. 10 15h00-18h30 Happy House Coffee Hour
Common Room

Nov. 10 19h30 Delta Theta Phi Movie Night
Lounge

Nov. 11 12h00 Legal Theory Workshop
Jules Coleman (Yale)
Room 202, Chancellor Day Hall

Nov. 16 12h00 Government Legal Services
Mr. Joseph Groia, Deputy Director, Enforcement,
Ontario Securities Commission
Mr. Louis Crête, Clarkson, Tétrault,
formerly of the litigation department, Ministère de la
Justice, Québec
(to be confirmed)

Nov. 16 20h00 John Humphrey Human Rights Lectureship

Nov. 17 15h00-18h30 Happy House Coffee Hour
Common Room

Nov. 18 16h45 Journée annuelle de Centre de droit privé et comparé
du Québec: Launching of the *Private Law Dictionary*
and the "Lexique de droit privé".
Common Room, Chancellor Day Hall

The Law Student's Frustration for the Taxation Year

by Richard Rosensweig

s. 7501. (1) The General Rule of The Study of Taxation - except as otherwise provided in the Part:

(a) A law student's frustration for a taxation year is the aggregate of the amount of time, if any, by which

(i) he studied for Taxation I

(ii) he spent waiting for the 18th Edition of The Income Tax Act to arrive in the Law Faculty bookstore

(iii) he spent listening to the phrase: "Tax is an annual affair"

(iv) He was required to copy notes of a student that managed to get up for an 8:00 a.m. make-up class

divided by

(b) his non-taxation frustration for the seven taxation year immediately preceding, and the three taxation year immed-

ately following the year which would otherwise bedetermined as the proportion thereof that

(i) he spent inhaling rancid greasy fumes emitted by grilled breakfast substances in the Law Faculty cafeteria

(ii) he watched American and/or Canadian election debates

(iii) he spent trying to get a seat in the second year B.C.L. section of Common Law Property I

the quotient of which may be subtracted from

(c) the existing life of the student before ever having read a sentence such as this

is equal to

(d) the law student's frustration for the taxation year for the purposes of this part.

The Final Arbiter cont'd from p. 1

of a traditional jurisdiction by the Courts can conduce to equitable sharing, it should not be withheld merely because difficulties in particular cases and the making of distinctions may result in slower and perhaps more painful evolution of principle."

Eventually everyone - his fellow justices and the provincial legislatures which passed family law reform acts to protect people in Irene Murdoch's dilemma - came around to Laskin's view. But by then he had moved on to different areas of dissent on his court.

As for the other label, "the Laskin court", it made sense at least as a public relations designation. Laskin was the first chief justice to take his message to the public, and his message was that the Supreme Court of Canada was a body that Canadians owed to themselves to understand. For a judge, Laskin was a highly visible presence. He made speeches. He gave interviews. He introduced television into the courtroom when he allowed cameras to record the handing down of the court's judgment in the patriation case of 1981, the judgment that led to the bringing home of Canada's constitution. And he answered criticisms of his court. In 1978, when some legal

cont'd on p.8 p.

Bar/Bri - New York Bar Review Program

Quebec, Ontario and British Columbia define only the limits of your imagination, not the possibilities available to you as a law school graduate. Alternatives do exist outside of Canada, and New York is one of the more attractive of these. Bar/Bri offers the most extensive of all the bar preparatory courses in New York, as well as offering preparatory courses for bar exams in most other states.

Being a member of the New York Bar also has attractive advantages for the student who is not necessarily interested in practicing law, either in Canada or in the States. If you are considering working abroad, being a member of the New York Bar carries considerable weight with overseas companies.

All those interested in either writing the New York Bar, or simply in obtaining more information, are asked to contact Joani Tannenbaum at 989-1529 for details.

*****REMINDER: If you register for the Bar/Bri Law Review Course before Friday, November 25th, you will save \$150 U.S. off the regular price of the course.**

Supplementary Law Courses to be Offered Next Semester

In its continuing efforts to offer a curriculum which is both academically challenging and current to changing needs, the Faculty is adding the following courses to the selection already available to students next semester:

Commuters and the Law, Prof. M. Boardman, 3 credits

What is the nature of the relationship between subway attendant and passenger? Is a transfer an innominate contract containing obligations necessarily correlative to passage, or merely a piece of paper to be torn up and thrown away on the stairs? What are your legal rights if a little old lady jabs you in the stomach with her umbrella on the bus?

Evaluation: Students will be marked on their performance in an obstacle course set up in Montreal's transportation network at rush hour.

Prerequisites: Light clothing, protective footwear, flares.

Restitution: A Case Study, Prof. Lazarus Ball

In this seminar, students will examine the concept of equity as it applies to pinball. For example, when a player Wotanates with a ball already in firing position, is it fair that another ball is not provided? If the kicker fails to work, what legal recourse lies to the victim? The nature of possible pinball remedies will also be studied, with particular emphasis on emerging theories of violence as they may apply.

Evaluation: Final game worth 100% of final mark.

Prerequisites: Tolerance for cigarette smoke, pinball debit card recommended.

Judicial Review of Administrative Action, TBA,

This course will explore possible remedies to real screw-ups by the administration. Sample problems include double-booking of the common room, cancellation of courses required in order to graduate, impossible reorganizations of the library during exam time, and having "the Three Neat Guys" teach NCP.

Evaluation: Students will be marked on their efforts to be reinstated after being expelled from the Faculty.

Prerequisites: Some Legal Aid experience is

advised.

Tortes, TBA

Even more half-baked ideas on the interconnectedness of all things. Replaces old course title "Cooking for Credit".

Evaluation: Extemporaneous oral exam conducted in the shower.

Prerequisites: Earplugs, an undergraduate degree in philosophy.

Editor's Note: Thank you for your good contribution but please sign future submissions.

Exam Questions We'd All Love to See

by Dan Urbas

The mid-semester award for "Best Exam Question" in the category of "Most Congenial Inquiry" goes to Prof. Durnford's winning question, found on pp. 231-2 of his Taxation I casebook. The question follows a fact pattern on capital gains and how to tell them apart from business income:

"Looking forward to an early retirement at age 55, when he was still 53, Mr. Flitey purchased 10 acres of vacant land just outside the city. It cost him \$10,000. His declared intention was to build on it, plus pursue his favourite hobby of beekeeping.

Almost immediately, he set up some beehives, driving over to the property from his apartment in the evenings to collect the

honey.

One year and nine months after he had bought the property and before he had hired an architect to design his retirement home, an offer to purchase for \$250,000 was received from Farevue Inc. (they wished to put up a shopping centre).

Mr. Flitey's reaction was 'Whooppee! Now we'll be able to take off for retirement in Labrador, and we won't even have to wait until I'm 55.'"

And the winning exam question?

"What province is Labrador in?"

Answers and accolades are to be directed to Minister of National Revenue in Shawinigan.

YEARBOOK

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Law Women Undefeated

by Melinda Munro, LL. B. III

McConnell Winter Stadium rang with cheers as the Women, Lunatics, and Criminals scored a decisive victory over the Molson Deltoids. Down one nothing at the end of the first period Munro scored on a brilliant set up from Lannan. Midway through the second period a pass from Moran allowed Munro to score her second of the night. A late second period lapse was held in check with the fantastic net-minding of Elizabeth 'The Wall' Eid.

While the opposing goal tender was reduced to a screaming mass of hysteria by the bar-raging of Moran and Lannan, the defensive team of McLaughlin and Quon kept things pretty cool at the home end. The game was over when early in the third Munro put on a burst of speed and went in single-handedly to complete the perfect hat-trick.

After the game Coach Guiney crowed with pleasure. "They were fantastic. Coaching

this team is going to be a piece of cake. Look out Oilers!" Don Cherry told Ron MacLean that he like the agressiveness of the team; "I like the way Munro has that fire in her eyes when she get those wheels on. I'm tellin' you, Ron, that Moran knows that if you charge the other team they will get out of your way. Moran is merciless on offence. Lannan really knows how to work those corners; elbows up, head down, she knows the other team are just a bunch of wimps. The defensive team is really well coordinated. While Quon played the Paul Coffey offensive style, McLaughlin held back and covered, waiting to release her screaming slap-shot. Eid is the future of this team. She never went down, never covered up, they caught her once with her head turned but after that the door was just locked up tight. If Guiney isn't Coach of the Year, I'll wear a conservative suit. But hey you know what happens to these good young guys eh? Lured away by the big money. This team could go places but they've gotta hang onto this guy."



The Final Arbiter
cont'd from p. 5

academics took a jab at the Supreme Court in general and Laskin in particular as showing a bias in certain directions, the Chief Justice responded with *le mot juste*.

"I have no constituency to serve," he told a conference of journalists, "except the realm of reason."

But "the Laskin court" wasn't Laskin's court in the sense that he carried it down paths he wished it to follow. Perhaps Laskin was too bold, too daring, too far out in front. Perhaps the traditional conservatism of the Supreme Court was resistant to Laskin's swifter pace. Perhaps haste in the law is better made slowly and reasonably. Perhaps other and opposite views were equally valuable in the law. Whatever the explanation, Laskin's influence on the thinking of the other eight judges was an occasional thing, and nowhere did he and they run into more fascinating wrangles than in constitutional cases.

Laskin was a strong centralist. As a law school teacher and as a jurist, he gave the British North America Act an interpretation that favoured the exercise of strong federal powers.

That brought him into occasional clashes with other justices whose analysis of the BNA Act made them lean toward the provinces. What added more complication to the difference in philosophies was that often, even when he and his colleagues reached agreement in certain cases that the federal government should prevail over the provinces, they disagreed on the reasons for their decisions. One group of justices, trailing after Laskin, would base their judgment on one section of the BNA Act, while another group would find their rationale in an entirely different section. These were situations that made for intrigue, exasperation, and a small dose of comic relief.

Sports-Corner Le Coin des Sportifs

Law Games - Jeux-Ridiques

Il ne reste qu'une trentaine de places pour les Jeux-ridiques. Inscrivez-vous.

There are only about thirty places left for the Law Games, so sign-up today.